



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
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**APPLICATION FOR CERTIFICATION FOR THE  
GENESIS SOLAR ENERGY PROJECT  
GENESIS SOLAR, LLC**

**DOCKET No. 09-AFC-8**

## **DECISION AND SCOPING ORDER**

### **I. Background**

On January 26, 2010, the Committee designated by the Energy Commission to conduct proceedings on the Application for Certification (AFC) for the Genesis Solar Energy Project held a hearing on a motion brought by the Applicant, Genesis Solar, LLC, for Scoping Order to address the following legal issues:

1. What is the Commission's Policy on use of water for power plant cooling purposes?
2. What is the legal affect of the US Bureau of Reclamation's Accounting Surface Methodology on groundwater pumping in the Chuckwalla Valley Groundwater Basin?
3. What is the legal standard for including future projects in the cumulative impact analysis under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA)?
4. Does the Commission have a policy of conserving water for use by projects that are not yet identified?

### **1. COMMISSION'S POLICY ON USE OF WATER FOR POWER PLANT COOLING**

The Energy Commission articulated a policy on the use of water for power plant cooling in the *2003 Integrated Energy Policy Report* (2003 IEPR). It states:

Consistent with the Board policy and the Warren Alquist Act, the Energy Commission will approve the use of fresh water for cooling purposes by power plants which it licenses only where alternative water supply sources and alternative cooling technologies are shown to be environmentally undesirable or economically unsound. (2003 IEPR, p. 41.)

The “Board policy” refers to the State Water Resources Control Board ( SWRCB or Board) Resolution No. 75 58 entitled “*WATER QUALITY CONTROL POLICY ON THE USE AND DISPOSAL OF INLAND WATERS USED FOR POWER PLANT COOLING*” (hereinafter, “Policy 75-58).

The first principle enumerated in Policy 75-58 creates a priority of water sources for power plant cooling as follows:

It is the Board's position that from a water quantity and quality standpoint the source of powerplant cooling water should come from the following sources in this order of priority depending on site specifics such as environmental, technical and economic feasibility consideration: (1) wastewater being discharged to the ocean, (2) ocean, (3) brackish water from natural sources or irrigation return flow, (4) inland wastewaters of low TDS, and (5) other inland waters.

The Applicant plans to use groundwater for cooling the Genesis Solar Energy Project power plant. In order to get clarification on SWRCB's relevant policy, CEC staff requested and received a letter from the executive director of the SWRCB, which was introduced into the record. The letter states that the definitions of fresh inland waters and brackish waters contained in Policy 75-58 do not extend to groundwater. SWRCB directs CEC to Board Policy 88-63 which states:

All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards with the exception of [s]urface and ground waters where... [t]he total dissolved solids (TDS) exceed 3,000 mg/L (5,000 uS/cm, electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system.

The letter further states that “[s]tate policy for water quality control does allow, under some circumstances, the use of [surface] supply water with TDS ranging from 1,000 to 3,000 mg/l to supply renewable energy projects.”

Therefore, we can only conclude that Policy 75-58 does not govern the definition of groundwater in the CEC policy as stated in the 2003 IEPR. Staff and Intervenor CURE argue that the California Energy Commission (CEC) has never simply relied on a numeric threshold to determine whether a project conforms to the CEC policy on water used for power plant cooling.

To provide the Applicant the guidance it seeks in understanding the Energy Commission water policy affecting groundwater, we return to the language of the 2003 IEPR, where, at page 41, it quotes the Warren-Alquist Act regarding conserving water and using alternative sources:

“It is further the policy of the state and the intent of the Legislature to promote all feasible means of energy and water conservation and all feasible uses of alternative energy and water supply sources.”

The Committee reads this language as requiring projects seeking to use groundwater for power plant cooling to use the least amount of the worst available water, considering all applicable technical, legal, economic, and environmental factors. The suitability of using brackish groundwater for power plant cooling is necessarily a question of fact.

## **2. LEGAL AFFECT OF THE U.S. BUREAU OF RECLAMATION’S ACCOUNTING SURFACE METHODOLOGY ON GROUNDWATER PUMPING IN THE CHUCKWALLA VALLEY GROUNDWATER BASIN**

The Committee agrees with the Applicant that the U.S. Bureau of Reclamation’s accounting surface methodology is not a LORS. All parties acknowledged, however, that the methodology could be used as a tool in the CEC’s environmental analysis. The methodology’s applicability to the Genesis AFC process is a question of fact that may be heard in future evidentiary hearings if necessary.

## **3. LEGAL STANDARD FOR INCLUDING FUTURE PROJECTS IN THE CUMULATIVE IMPACT ANALYSIS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

In their briefs as well as at the hearing, the parties indicated that the case law and other legal sources adequately classified those future projects which should be considered in a cumulative impacts analysis. The Committee finds that the state of the law is sufficiently clear and the parties are quite capable of discerning the factors necessary to determine reasonably foreseeable projects. It is premature at this time for the

Committee to determine such questions of fact as whether projects included in the cumulative analysis are reasonably foreseeable.

#### **4. COMMISSION'S POLICY OF CONSERVING WATER FOR USE BY PROJECTS THAT ARE NOT YET IDENTIFIED**

The Commission's policy on conserving water is articulated above. The parties are admonished to work cooperatively to resolve differences to the extent possible. The Committee expects Staff to work cooperatively with the Applicant to perform the review of this AFC as expeditiously as any other project seeking to qualify for ARRA funding.

Dated: February 2, 2010 at Sacramento, California.

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JAMES D. BOYD  
Vice Chair and Presiding Member  
Genesis Solar AFC Committee

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ROBERT WEISENMILLER  
Commissioner and Associate Member  
Genesis Solar AFC Committee